IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1257 of 2000
With
CIVIL APPLICATION No. 168 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MP PATEL SR RESEARCH ASST - Petitioner(s)
Versus
VICE CHANCELLOR & 2 - Respondent(s)

==========

Appearance :
Mrs.Sangita N. Pahwa for M/S THAKKAR ASSOC. for Petitioner(s) : 1,
MR SA DESAI for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 15/02/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under

Article 226 of the Constitution of India praying for direction to the respondent to promote the petitioner to the post of Assistant Professor and other equivalent posts and also praying to quash and set aside the action of the respondents to promote unqualified and junior persons from the post of Agriculture Officer to the post of Assistant Professor and other equivalent posts as being arbitrary, illegal, null and void. The petitioner has also prayed to restrain the respondents from promoting any employee working as Agriculture Officer to the post of Assistant Professor who are unqualified and junior to the petitioner.

2. The petition was admitted and rule was issued on 02.08.2000. The court has also granted interim relief to the effect that till the petition was pending, no post of Assistant Professor in the respondent university shall be filled in, except in accordance with the relevant statutes of the University.

3. It is the case of the petitioner that the petitioner was possessing requisite qualification of M.Sc.(Agriculture) for the appointment to the post of Agriculture Officer. The petitioner came to be appointed as Agriculture Officer by way of direct recruitment in the respondent agriculture university on 24.05.1989. As per the Government Resolution dated 20.03.1989, the qualification prescribed for the promotional post of Assistant Professor was to possess the M.Sc. Degree with minimum 55% marks. It is the case of the petitioner that some of the employees working on the post of agriculture officer who did not possess requisite qualification of M.Sc. Degree approached the Campus Director, Gujarat Agriculture University, Dantiwada, the respondent no.3 with a request to promote them to the post of Assistant Professor though they were not eligible for promotion. That their request was rejected by respondent no.3 on 14.03.1998. The said persons have made further representation to the respondent university to consider their case for promotion to the post of

Assistant Professor though they were juniors to the petitioner having been promoted as Agriculture Officer subsequent to the appointment of the petitioner as Agriculture Officer.

4. It is also the case of the petitioner that on 15.02.2000, the respondent no.2- Registrar of the Gujarat Agriculture University issued Agenda for the Board Meeting No.136, including the demand of the employees for promotion to the post of Assistant Professor on the basis of their seniority only, irrespective of the fact whether they were possessing or not the requisite qualification. The Campus Director has once considered and rejected the claim of the persons as they were not qualified, vide order dated 14.03.1998. Hence, there was no justification for the Board of Management to give them promotion by ignoring the fact that they were not qualified for promotion. The management could not be permitted to relax the minimum qualification prescribed for the post of Assistant Professor with a view to show favour to the said candidates under political pressure and

influence.

5. It is in the above back-ground the present petition is filed.

6. On notice being issued by the petitioner, an affidavit-in-reply was filed on behalf of the respondent. It is stated in the said affidavit-in-reply that promotion to the post of Assistant Professor and its equivalent posts were governed by the Statutes framed in this behalf by the university vide notification dtd.14.10.1986 and 07.03.1987 which were annexed with the said reply. It is further stated that Statute 40 (5) (ii) (b) stipulates that when the posts are filled in by promotion, they shall be on the basis of seniority cum merits from amongst Agriculture Officers with graduate degree or post-graduate degree who had put in five years of service as Agriculture Officer. It is further submitted that at the relevant time the promotions in question were governed by the above Statutory Rule and therefore the contention of the petitioner is unfounded since the university was

acting as per the rules prevalent at that time. The statute 40 as above, dated 07.03.1987 had been put into operation on and from 03.10.1986. This provision has ceased to be in operation from May 1993 and in compliance of GR of the State Government dated 20.03.1989, the university has amended the Statute keeping in view the directions in the GR. At present, the post of Assistant Professor is, therefore, filled in only by direct selection and hence, any appointments would be now governed by the above and the university is acting as per the said Statute.

7. It is further submitted that the university has on 15th February, 2000 in its 136th Board meeting vide item NO.136.11 arrived at a decision that if any senior employees have been left out at the time when junior employees were promoted, the cases of such senior employees would be taken into consideration and after verification of their claims appropriate action would be taken.

8. During the pendency of the aforesaid petition and

looking to the averments made in affidavit in reply, the petitioner has filed Civil Application No.168 of 2006 praying for the direction to the respondents restraining them from filling up the post of Assistant Professor without considering the claim of the petitioner for the said post. Alternatively, the prayer was made to hear the main petition on earlier date.

9. In this Civil Application, it is contended that the respondent university has promoted 176 unqualified persons as Assistant Professors in disregard of the claim of the petitioner. Thereafter, the Recruitment Rules have been amended and post of Assistant Professor could not be filled up by way of promotion in view of the University Resolution of May, 1993. It is further stated that again vide notification dated 12.05.1998, the university has decided to repeal the said amendment of 1993 w.e.f. 1986 and therefore, the post of Assistant Professor is to be filled up in ratio of 1:1. A copy of the notification dated 12.05.1998 is produced on record alongwith the application. The

petitioner has also stated in the Civil Application that the State Government has called for the proposal for filling up the post of Assistant Professor and the University has sent the proposal for filling up the post of Assistant Professor. It is also alleged in the said civil application that respondent university would not give promotion to the petitioner in view of the pendency of the petition though the petitioner is eligible.

10. On behalf of the respondent an affidavit in reply to the Civil Application is filed wherein it is stated that by notification dated 3.5.1993, the promotions to the post of Assistant Professor from Agriculture Officer was stopped and thereafter no Agriculture Officer has been appointed to the post of Assistant Professor. It is further stated that after the notification dated 12.5.1998, no post has been filled up by promotion. It is also stated that it is true that nine employees were juniors to the petitioner. However, the contention of the petitioner that they have been promoted to the post of Assistant Professor is incorrect. No such

promotions have been made. Earlier promotions if any, were governed by Statute 40 and after 3.5.1998 the said system has been stopped and no such posts as alleged have been filled up by promotion. It is further stated that posts of Assistant Professor for which sanction is awaited from the State Government, would be filled in only after receipt of due approval/sanction as per the recruitment rules specified in State Government's resolution dated 1.10.1999 and the University's notification dated 15.10.1999. It is also stated that the same would be done after advertisement at the national level.

11. From the above pleadings of the parties and submissions made by the learned advocates appearing on their behalf, nine persons whose names have been mentioned in the petition, were not promoted to the post of Assistant Professors. As per the prevalent rules, appointments were made upto 1993. However, since, 1993, no promotions were given from the post of Agriculture Officers to the post of Assistant Professors. It is true that by virtue of

Notification dated 12.5.1998, the position prior to 1993 was restored but, in reality, no post has been filled up by promotion. There is no denial of the fact that posts of Assistant Professors are vacant and sanction from the State Government is awaited. As per the affidavit in reply, these posts would be filled in as per the Recruitment Rules specified in the State Government's resolution dated 01.10.1999 and the University's notification dated 15.10.1999 and after issuance of the advertisement at the national level. It is equally true that the University vide its 136th Board Meeting held on 15th February, 2000, has taken the decision that if any senior employees have been left out at the time when junior employees were promoted, the cases of such senior employees would be taken into consideration and after verification of their claims, appropriate action would be taken.

12. In the above view of the matter, though the posts of Assistant Professors are to be filled up as per the recruitment rules, as per the University resolution dated 15/2/2000, the petitioner's case

is required to be considered as juniors to the petitioner were promoted in the past and the petitioner was left out. The respondents are, therefore, directed to consider the case of the petitioner in the light of above discussion and to grant further promotion to the post of Assistant Professor if all requisite criteria are fulfilled.

13. With the aforesaid direction and observations, the petition is accordingly disposed of. Rule is made absolute to the above extent without any order as to costs.

14. By virtue of the above order, Civil Application stands disposed of.

(K.A.PUJ, J.)

amit